

## **REMARKS**

Applicant hereby traverses the rejections of record, and requests reconsideration and withdrawal of such in view of the remarks contained herein. Claims 1-28 are pending in this application.

### **Double Patenting Rejection**

The Examiner provisionally rejects claims 1 and 16 on double patenting grounds over claim 5 of U.S. Patent Application No. 10/876,048. *See* Current Action, paragraphs 2 & 4. Applicant proposes filing a terminal disclaimer with respect to the rejected claims upon indication that such claims are allowable.

### **Rejection Under 35 U.S.C. 112(2)**

Claims 1-15, 22, 23, and 25-28 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite. In the Current Action the Examiner takes issue with “using said calculated probabilities,” as set forth in the claims. *See, for example*, Current Action, paragraph 7. Specifically, the Examiner opines that in view of this limitation “it is unclear what method/process applicant is intending to encompass.” *Id.* Applicant notes that the Board of Patent Appeals and Interferences has generally held that a claim which clearly recites the step of “utilizing” is not indefinite under 35 U.S.C. 112, second paragraph. *See, for example, Ex parte Porter*, 25 U.S.P.Q.2d 1144 (Bd. Pat. App. & Inter. 1992) (definite claim was to “A method for unloading nonpacked, nonbridging and packed, bridging flowable particle catalyst and bead material from the opened end of a reactor tube which comprises utilizing the nozzle of claim 7.”). As such, the claims have been amended so that “using” has been replaced with “utilizing.” The claim amendments are intended only to expedite prosecution of the claims, not to narrow their scope. Applicant notes that the claims are not amended in the face of prior art. Support for the claim amendments can be found in the specification, at for example, paragraphs [0023], [0025], and [0027]. No new matter has been added. In view of the above, Applicant submits that the pending claims are in condition for allowance. Therefore, Applicant requests withdrawal of the 35 U.S.C. 112 rejection of record.

As mentioned above, the Examiner indicates that claims 1-15, 22-23, and 25-28 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite. However, Applicant cannot find, in the Current Action, where the Examiner explicitly addresses claims 3-9, 12, 14, 16, 23, 26, and 27. Moreover, Applicant notes that these claims do not recite the claim limitation which the Examiner bases his rejections upon. As such, Applicant surmises that claims 3-9, 12, 14, 16, 23, 26, and 27 are not rejected, but are instead objected to for depending upon a rejected base claim. Therefore, in view of the above Applicant submits that claims 3-9, 12, 14, 16, 23, 26, and 27 are in condition for allowance.

### **Rejection Under 35 U.S.C. 101**

Claims 1, 2, 10, 11, 13, 22, 25, and 28 are rejected under 35 U.S.C. 101 “because the claimed recitation of a use, without setting forth any steps involved in the process, results in an improper definition of a process....” *See, for example*, Current Action, paragraph 7. Applicant submits that the claim amendments discussed above obviate the rejection. Therefore, Applicant requests withdrawal of the 35 U.S.C. 101 rejection of record.

### **Claim Objections**

Claims 17-21 and 24 are objected to for being dependent upon a rejected base claim. Applicant submits that, in view of the remarks above, the pending independent claims are in condition for allowance. As such, Applicant requests removal of the current objection.

In view of the above, Applicant believes the pending application is in condition for allowance.

Applicant believes no fee is due with this response. However, if a fee is due, please charge Deposit Account No. 50-1078, under Order No. 10040054-1, from which the undersigned is authorized to draw.

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Respectfully submitted,

By 

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